IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re	
JOYCE A. EVANS and MICHAEL EVANS,	No. 95-21545 Chapter 13
Debtors.	

M E M O R A N D U M

APPEARANCES:

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This case involves a "late" objection to confirmation of a proposed chapter 13 plan filed by United Companies Financial Corporation ("United Companies") on November 9, 1995. By order entered November 27, 1995, the court provided United Companies the opportunity to submit a brief in reply to the debtors' response to United Companies' objection to confirmation which urged that the objection not be considered since it was not timely filed in accordance with Local Bankr. R. 13(g). That rule requires, *inter alia*, that any objection to confirmation in a chapter 13 case "be filed prior to the conclusion of the initial meeting of creditors held pursuant to 11 U.S.C. § 341(a) provided, however, that the Chapter 13 trustee and any creditor attending and participating in the meeting of creditors will be allowed until the close of business on the third business day following the conclusion of the meeting within which to file an objection to file an objection."

It is undisputed that United Companies did not have a representative attend the initial meeting of creditors held on November 7, 1995, and, accordingly, that its objection to confirmation was not filed timely filed in accordance with Local Bankr. R. 13(g).

In its brief, United Companies contends that its "due process rights" have been violated and, as a result, sufficient

"cause" has been established so as to allow consideration of the objection to confirmation. This contention is premised upon the alleged grounds that no adversary proceeding was instituted by the debtors "in order to determine the validity, priority or extent" of United Companies' lien, that a copy of the plan was not served by the debtor upon United Companies, and that the summary of the plan which United Companies received from the clerk did not reveal the terms of the plan. Accordingly, the court will address these concerns raised by United Companies. This is a core proceeding. 28 U.S.C. § 157(b)(2)(L).

The debtors filed their chapter 13 petition on September 29, 1995, along with a proposed plan, Schedules A-J and a statement of financial affairs. On October 16, 1995, an "ORDER FOR MEETING OF CREDITORS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAYS" was mailed to United Companies which provided notice that the 11 U.S.C. § 341(a) meeting of creditors would be held on November 7, 1995. Among other things, that order further advised as follows:

> WRITTEN OBJECTIONS TO CONFIRMATION MUST BE FILED PRIOR TO THE CONCLUSION OF THE INITIAL SEC 341(A)[sic] MEETING OF CREDITORS, EXCEPT AS OTHERWISE PROVIDED BY LOCAL BANKRUPTCY RULE 13(G)[sic] .... THE DEBTOR MAY MODIFY THE PLAN PRIOR TO CONFIRMATION WITHOUT NOTICE TO CREDITORS; PROVIDED, HOWEVER, THAT THE HOLDER OF A CLAIM WHOSE RIGHTS ARE ADVERSELY AFFECTED BY ANY SUCH MODIFICATION SHALL RECEIVE NOTICE .... CREDITORS ARE RESPONSIBLE FOR REVIEWING THE DEBTOR(S)' PLAN FOR EXACT TREATMENT AND THE TRUSTEE DISCLAIMS ANY

> RESPONSIBILITY FOR THE SAME. CLAIMS ARE DEEMED ALLOWED TO THE EXTENT OF THE CONFIRMED VALUE OF THE COLLATERAL .... UNITED COMPANIES TO BE PAID IN FULL AT 10% INTEREST.

There can be no dispute that United Companies received a copy of the October 16 order because it filed two proofs of claims on November 6, 1995, prior to the initial § 341(a) meeting of creditors. Indeed, nowhere in the brief of United Companies does it contend that it did not timely receive the aforementioned October 16 order so as to allow it to file an objection to confirmation.

Fed. R. Bankr. P. 3015(d) requires that "[t]he plan or a summary of the plan shall be included with each notice of the hearing on confirmation ...." In this district, each creditor is provided with a summary of the plan's treatment of the indebtedness owed to that creditor. United Companies mistakenly assumes that the summary contained in the October 16 order concerning the treatment of its claim was not accurate because it stated that United Companies would be paid in full while it did not advise that the fair market value of the property securing the claim was less that its claim. Apparently, United Companies is under the impression that the proposed plan "crams down" the amount of the secured portion of the claim to the scheduled value of the collateral. It does not. The plan does not list a value for the collateral, but instead provides that

it will be paid "IN FULL" at a monthly payment of $185.00 including 10% interest.

Part of this confusion may perhaps be attributable to the fact that the debtors scheduled the indebtedness to United Companies at $7,000.00 and the current market value of the collateral at $9,000.00, while United Companies' two proofs of claims filed on November 6, 1995, aver that the indebtedness totals $11,877.02 (including an arrearage of $1,440.20 listed in an "arrearage proof of claim"). Obviously, if debtors and their counsel believed that the indebtedness was less than the current fair market value at the time the schedules and plan were filed, there could be no attempt to "cram down" the secured portion of the claim. And indeed, there was no such attempt made by the debtors in their proposed plan. If the proposed plan is not subsequently amended, and assuming that United Companies' proofs of claims professing an indebtedness of $11,877.02 is not objected to upon other grounds, United Companies would receive payment in full, which means the entire amount of the indebtedness which it claims it is owed, with 10% interest.

As a result, United Companies' argument that the October 16 order did not accurately set forth the terms of the plan as it affected the indebtedness owed to United Companies is without merit. *See In re Rodgers*, 180 B.R. 504, 506-507 (Bankr. E.D.

Tenn. 1995)(summary of plan provided creditor with adequate notice of treatment of its claim to satisfy due process). Regarding the implication by United Companies that the debtor or the clerk was under a duty to serve a copy of the plan upon United Companies in addition to the summary of the plan included in the October 16 order, United Companies could have requested a copy of the plan from the clerk, but did not do so. The debtor was under no obligation to serve United Companies with a copy of the plan. In sum, United Companies had the means to review the contents of the plan in the clerk's office or obtain a copy of the plan by requesting one from the clerk, but failed to take the initiative to do either.

Finally, the argument by United Companies that the debtor was required to file a motion under Fed. R. Bank. P. 3012 for a valuation hearing or an adversary proceeding "to determine the fair market value of the property" and the failure of the debtor to do so violated its due process rights is equally without merit. The same arguments were rejected by the court in *Lee Servicing Co. v. Wolf (In re Wolf)*, 162 B.R. 98, 106-108 (Bankr. D.N.J. 1993)(an adversary proceeding to determine the validity or extent of a lien, motion to value under Fed. R. Bankr. P. 3012, or separate objection to allowance of a secured claim is not required to modify a secured party's rights in a chapter 13

plan). The case relied upon by United Companies, *Fireman's Fund Mortgage Corporation v. Hobdy (In re Hobdy)*, 130 B.R. 318 (9th Cir. BAP 1991), is inapposite in this regard as the court therein concluded that "the initial notice sent to all creditors did not advise ... that the confirmation process would be the final word in any conflicts between allowed claims and amounts provided for in the proposed plan." *Id.* at 320. In this matter, United Companies was advised by the October 16 order that "secured claims will be paid only to the extent of the confirmed value of collateral." Additionally, the conclusion reached by the *Hobdy* court is a minority position. *See In re Wolf*, 162 B.R. at 108 n.14.

In light of the fact that United Companies received adequate and timely notice of the bankruptcy proceeding, including the proposed treatment of its claim and the deadline for objecting to confirmation of the plan, and because United Companies has failed to come forward with any justification whatsoever for not timely filing an objection to confirmation, its untimely objection to confirmation will not be considered and will be overruled.

An order will be entered in accordance with this memorandum opinion.

FILED: December 6, 1995

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE